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ITEM NO.3 & 4 COURT NO.3 SECTION-XIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s)for Special leave to appeal(c) Nos.20146-20152/2000  
(From the judgment and order dated. 30.3.2000 in OP  
9602/98, 9734/98, 4169/98, 20820/98, 8530/98,8969/98 and  
11519/98 of the High Court of Kerala at Ernakulam )

Jyoti K.K. & Ors. .. Petitioners

Vs.

Kerala Public Service Commission .. Respondents  
& Ors.

(With prayer for interim relief and office report)  
(For final disposal)

With SLP(C) No. 13684-13685/2001 ( With appln.  
for c/delay in filing SLP and office report ) ( for final  
disposal )

DATE : 13.3.2002 : This/These matter (s) was/were  
called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU  
HON'BLE MR. JUSTICE P. VENKATARAMA REDDI

For Appellant (s) : Mr. L Nagaswara Rao, Sr. Adv.  
Mr. Roy Abraham, Adv.  
Mr. Himinder Lal, Adv.

For Respondent (s) : Mr. K.M.K. Nair, Adv.  
Mr. Vipin Nair, Adv.  
Mr. P.B. Suresh, Adv.

Mr. K.R. Sasiprabhu, Adv.

UPON hearing counsel the Court made the following

O R D E R

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Mr. L. Nageshwar Rao, learned senior Advocate  
and Mr. K.M.K. Nair, learned counsel argued from 10.35  
a.m. to 10.50 a.m.

Delay condoned in SLP(C) Nos. 13684-13685/2001.

Leave granted.

The appeals are allowed in terms of the signed  
order.

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Charanjit

[ Om Prakash ]  
Court Master

[ Signed order is placed on the file ]

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2194-2200/2002@@  
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC  
( arising out of SLP(C) 20146-20152/2000 )

Jyoti K.K. & Ors. .. Appellant

Vs.

Kerala Public Service Commission .. Respondent  
& Ors.

With C.A.No.2201-2202/2002@@  
CCCCCCCCCCCCCCCCCCCCCCCC  
( arising out of SLP(C) Nos. 13684-13685/2001 )

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Delay condoned in filing SLP(C) Nos.  
13684-13685/2001.

Leave granted.

These appeals arise out of an order made by the  
High Court in original petitions filed under Article 226  
of the Constitution.

The Kerala Public Service Commission invited  
applications for selection to the post of Sub-Engineers  
( Electrical ) in the Kerala State Electricity Board as  
per the notification dated 21.6.1994. The said  
notification provided that the qualifications for the  
post would be as follows :

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"1. SSLC or its equivalent

2. Technical qualifications -

a) Diploma in Electrical  
Engineering of a recognised institution  
after 3 years course of study.

or

b) A certificate in electrical  
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Engineering from any one of the  
recognised Technical School's shown below  
with five years service under Kerala  
State Electricity Board.

( Not fully extracted as not relevant )

or

c) MGTE/KGTE in electrical light  
and power (higher) with five years  
experience as II Grade Overseer  
(Electrical) under the Board."

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The appellants before us are holders of B.Tech.  
Degree in Electrical Engineering or Bachelor's Degree in

Electrical Engineering. On the basis that the appellants did not possess the necessary qualifications, the Commission held that they were not eligible for selection. In the writ petitions, the same having been challenged, it was contended that they possess higher qualifications and therefore non consideration of their cases is not correct. They sought for a direction to the Commission to consider them as eligible candidates. It was also pointed out that ever since the inception of the Board, persons possessing higher qualifications have been considered and appointed in terms of Rule 13 (1) of the Kerala State and Subordinate Services Rules 1956 and the Board having accepted higher qualifications to be ..3/-

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applicable in all such cases could not exclude them in the present cases.

The Commission contended before the High Court as is done before us now that the graduates in Engineering or persons possessing other qualifications, as held by the appellants, that may not be taken as higher qualifications, they are not equivalent qualifications prescribed for that post and persons who possessed higher qualifications can only be taken note of in cases where they acquired such higher qualifications after acquiring the prescribed qualifications. Rule 10 (a) (ii) of Part I of the Rules was also adverted to contend that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall be sufficient for the post. The qualifications, it was stated, possessed by the appellants do not presuppose the acquisition of the prescribed lower qualifications and, therefore, they were not eligible to be considered.

On the question that the said Rules are applicable to the Selection posts in the Board, there is no dispute. The High Court after setting out the contentions noticed that there were no executive orders ..4/-

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in relation to equivalent qualifications prescribed by the Government. The High Court stated that the position is that the qualifications possessed by the appellants do not presuppose the acquisition of prescribed lower qualifications and when qualification has been prescribed for a post, the same cannot be diluted and persons not possessing those qualifications cannot be permitted to be eligible. It was noticed that all those who had similar or even better qualifications than those candidates would not have applied for the post because they did not possess the qualifications mentioned in the advertisement and such a position would result in "fraud on public to appoint persons with inferior qualifications, in such circumstances, unless it is clearly stated that qualifications are relaxable". On that basis the High Court dismissed the petitions filed by the appellants. The contentions urged before the High Court are reiterated on either side before us.

Rule 10(a)(ii) reads as follows :

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" Notwithstanding anything contained in these rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified

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for a post in the Special Rules and such@@  
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of those higher qualifications which@@  
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presuppose the acquisition of the lower@@  
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qualification prescribed for the post@@  
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shall also be sufficient for the post."@@  
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It is nodoubt true, as stated by the High Court that when a qualification has been set out under the relevant Rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the Rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far. Under the relevant Rules, for the post of Assistant Engineer, Degree in Electrical Engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct

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recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of Sub-Engineer. In that view of the matter the qualification of degree in Electrical Engineering presupposes the acquisition of the lower qualification of Diploma in that subject prescribed for the post, shall be considered to be sufficient for that post. In the event the Government is of the view that only Diploma holders should have applied to post of Sub-Engineers but not all those who possess higher qualifications, either this rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree holder shall not be eligible to apply for such post. When that position is not clear but on the other hand Rules do not disqualify per se the holders of higher qualifications in the same faculty, it

becomes clear that the Rule could be understood in an appropriate manner as stated above. In that view of the matter the order of the High Court cannot be sustained. In this case we are not concerned with the question ..7/-

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whether all those who possess such qualifications could have applied or not. When statutory Rules have been published and those Rules are applicable, it presupposes that everyone concerned with such appointments will be aware of such Rules or make himself aware of the Rules before making appropriate applications. The High Court, therefore, is not justified in holding that recruitment of appellants would amount to fraud on the public.

However, we must notice one aspect of the matter. The Diploma holders who had been selected by the Public Service Commission have already been appointed and, therefore, it would not be appropriate for us to disturb those appointments. They shall continue in such appointments. Such of those eligible Degree holders who fulfil the qualifications referred to above and found suitable to be appointed shall be appointed taking note of the vacancies which are available within a period of three months from the date of receipt of this order.

Subject to what is stated above, these appeals shall stand allowed. No orders as to costs.

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[ S. RAJENDRA BABU ]@@  
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[ P VENKATARAMA REDDI ]@@  
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New Delhi, @@  
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March 13, 2002 @@  
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